

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF THE DREES	)	
COMPANY AND MCKNIGHT UTILITIES, INC.,	)	
TO SELL AND PURCHASE RESPECTIVELY	)	CASE NO. 8198
THE ASSETS OF THE DREES COMPANY	)	

O R D E R

On August 10, 1982, a public hearing was held at the Commission's offices in Frankfort, Kentucky, for the purpose of inquiring into the present operations of the Oak Brook Sanitation Company or McKnight Utilities, Inc. At the hearing, allegations were made of improper conduct by attorneys in this matter. Such allegations should be addressed to the Kentucky Bar Association, not to this Commission.

In 1979 the Drees Company entered into a contract with Patrick McKnight, d/b/a/ McKnight Utilities, Inc., for the operation of a sewage treatment plant owned by the Drees Company ("Drees") and serving the Oak Brook subdivision in northern Kentucky. The PSC certificated McKnight Utilities as the operator of this utility in 1979 (PSC Case No. 7585), and Mr. McKnight appears to have operated the plant satisfactorily until a series of personal problems overtook him beginning in 1980. At that time, Mr. McKnight declared personal bankruptcy and was

beset by a series of illnesses. The treatment plant operated by McKnight Utilities ("McKnight") was designed to serve a maximum of 1700 residential customers, but at present it serves only about 350 customers producing annual revenues of approximately \$35,000. McKnight has not had a rate increase since the plant's inception and has, instead, received a rate reduction at the behest of the Drees Company. While McKnight has continued to collect payment from the monthly billing, the utility gradually fell behind in the payment of its operating costs. As a result, McKnight used the security deposits of the customers as operating revenue and failed to place any funds in escrow with the Citizens National Bank as required by the terms of the third party beneficiary agreement between McKnight and the bank.

On October 26, 1981, the Union Light, Heat and Power Company ("Union Light") terminated electric service to the treatment plant for non-payment of approximately \$2,800 in back bills. The electric service was restored the same day after Drees paid Union Light \$1500. On March 19, 1982, Union Light again cut off the plant's electricity for non-payment, and the power remained off for four days. Service was restored when McKnight paid Union Light \$1,000 and signed an agreement to pay \$1562 monthly to both retire the back bill and remain current on future bills. McKnight failed to make these payments and on July 26, 1982, Union Light again terminated electric service to the treatment plant. The

power was off for three days and was restored only after the PSC had made a personal request to Union Light. In August, 1982, the Boone County Water District terminated water service to McKnight for the second time for failure to pay past due bills. As of this date, the treatment plant is still without water.

The operator's license of McKnight Utilities has expired and McKnight has failed to renew it. McKnight has also failed to file its annual report for 1981 with this Commission. Throughout this period, McKnight has continued to pay himself a salary from the utility's revenues. There presently exists approximately \$700 in the checking account of the utility. McKnight stopped operating the plant three weeks ago and has stated that he will not return to the daily operation of the plant until the Drees Company conveys to him the title to the plant. The Drees Company has indicated that it will not deed the plant to McKnight due to his failure to satisfactorily operate the plant.

In March, 1981, McKnight and Drees jointly petitioned the PSC for authority to convey the ownership of the plant from Drees to McKnight. After several postponements of the hearing due in part to the illness of Mr. McKnight, the PSC in March, 1982, approved this sale and transfer, but as of this date such sale and transfer have not been consummated. Thus, throughout the entire period of the treatment plant's existence Drees has been its owner. As such, it had a continuing responsibility to insure

that its customers, many of whom had purchased their residences from it, were provided with adequate service whether or not it chose to do so through an agent. As owner of the plant, Drees selected McKnight to be the operator of the plant at the time it was originally constructed by Drees. Whether McKnight is considered an employee or independent contractor for Drees, their relationship was a contractual one and could have been terminated or otherwise modified when Drees knew or should have known that McKnight was not performing satisfactorily. In this regard, the Commission believes the following facts are important to our conclusion as to who should bear the responsibility for the present operation of the treatment plant:

(a) Drees confirmed its special responsibilities as owner of the plant when it paid the \$1500 to Union Light to have the electricity restored to the treatment plant. This also caused Union Light to believe that Drees stood behind the obligations of McKnight.

(b) While Drees should have been on notice that there were serious problems with continuing to allow McKnight to operate the plant after the electricity was first shut off in October, 1981, Drees nevertheless tacitly approved McKnight's deficiencies by routinely continuing to pay the sewer charge for the properties it owns in the Oak Brook subdivision. Drees made such payments to McKnight in March, April, May, June and July, 1982, for a total of approximately \$7,000. This is almost the amount McKnight

was delinquent to Union Light. Drees should clearly have made an investigation as to what McKnight was doing with this money and have sought an arrangement with McKnight for payment of its money directly to Union Light so as to remain current in the plant's electric bill. This would have avoided the shut down of the plant in July, 1982, with its attendant health hazards.

(c) Drees also apparently never made any investigation as to how McKnight was using the security deposits Drees had obtained from the customers and these funds have now been dissipated by McKnight.

Based upon these facts as adduced from the evidentiary record herein, the Commission makes the following findings and conclusions of law:

1. While the Commission sympathizes with the personal problems of Mr. McKnight, it must nevertheless adhere to its legislative mandate and put the interests of the consumers of the Oak Brook subdivision first. Mr. McKnight has testified that he will not return to the daily operation of the treatment plant until Drees transfers the ownership of the plant to him. The Commission clearly cannot countenance such a blatant disregard of the public interest over a private dispute. Accordingly, and also for the other delinquencies previously set out, this Commission has no choice but to revoke the certificate of McKnight Utilities, Inc., and remove McKnight as operator of the utility.

2. As the owner of the sewage treatment plant, Drees has special responsibilities to insure that the purchasers of its properties who become customers of the plant are provided with adequate sewage disposal service. This responsibility extends to overseeing any operator Drees may choose to operate the plant for it. The evidence in this record establishes that Drees has failed to exercise proper oversight of McKnight's operation of the plant. Accordingly, the Commission finds that Drees should now take over the daily operation of the treatment plant and immediately install a new operator of its choice to insure that the plant is functioning adequately. Such operator should have a license from the Kentucky Department of Natural Resources' Division of Water. Moreover, as a condition to continuing to receive electrical service from Union Light, Drees should immediately provide full payment of the back bill to Union Light or negotiate a partial payment plan with that utility for retirement of this debt. Drees shall then be subrogated to Union's rights for payment against McKnight.

Based upon the above-recited findings and being advised, the Commission HEREBY ORDERS that the certificate granted to McKnight Utilities, Inc., for the operation of the Oak Brook sewage treatment plant is hereby revoked.

The Commission FURTHER ORDERS that the Drees Company shall take over the daily operation of the plant and immediately install a licensed operator to insure that the plant is adequately maintained in the future.

It is FURTHER ORDERED that the Drees Company shall immediately make full payment to the Union Light, Heat and Power Company of the total indebtedness of the treatment plant to that utility as of the date of this Order, or negotiate a partial payment plan with the utility.

It is FURTHER ORDERED that McKnight Utilities shall immediately turn over all assets of the Oak Brook Sanitation Company, including all accounts receivable, to the Drees Company.

It is FURTHER ORDERED that all customers of the Oakbrook Sanitation Company shall pay all present and future bills for sewage service to the Drees Company.

Done at Frankfort, Kentucky, this 13th day of August, 1982.

PUBLIC SERVICE COMMISSION

Martin M. Voth  
Chairman

Katherine Randall  
Vice Chairman

Tom Carrigan  
Commissioner

ATTEST:

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Secretary